

**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Union Oil of California DBA = Unocal	)	File Number EB-02-AN-069
Antenna Structure Registration Number 1059096	)	NAL/Acct. No. 20033278001
Kenai, Alaska	)	FRN 0001-535-541

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: January 31, 2003**

By the Anchorage Resident Agent Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Union Oil of California DBA = Unocal ("Unocal"), the registered owner of Antenna Structure Registration ("ASR") number 1059096, has apparently willfully and repeatedly violated Section 17.4(g) and 17.23 of the Federal Communications Commission's ("FCC or Commission") Rules<sup>1</sup> by failing to post the antenna structure registration number and maintain proper structure lighting. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Unocal is apparently liable for forfeiture in the amount of twelve thousand dollars (\$12,000).

**II. BACKGROUND**

2. On July 11, 2002, agents from the FCC's Anchorage Resident Agent Office inspected Unocal's registered antenna structure number 1059096, located within the Swanson River oil fields 15 miles north of Sterling, Alaska. During the inspection, the agents found no ASR number was posted on, near, or in the vicinity of the tower base, as required by the Rules. The agents observed two steady-on single small red lights mounted on top of the antenna structure. The lights appeared to be L-810 type lighting. Pursuant to ASR number 1059096, lighting must be maintained in accordance with the requirements in Chapters 4 and 5 of FAA Advisory Circular 70/7460-1J. Chapter 5 requires top mounted obstruction lighting of at least one red flashing (L-864) light installed in a manner to ensure an unobstructed view of one or more lights by a pilot.

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<sup>1</sup> 47 C.F.R. §§ 17.4(g) and 17.23.

<sup>2</sup> 47 U.S.C. § 503(b).

3. On August 15, 2002, the Anchorage Resident Agent Office issued an Official Notice of Violation (“NOV”) to Unocal, advising that the ASR number was not posted and the structure’s lighting was non-compliant with the ASR. On August 21, 2002, the NOV was returned as undelivered. The envelope was marked “Not deliverable as addressed, unable to forward.” The NOV was reissued August 22, 2002.

4. On September 5, 2002, Unocal replied to the NOV, stating that the ASR number will be posted and the lighting on the antenna structure will be replaced with at least one red flashing light and installed to ensure unobstructed view of the light by a pilot.

### III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>3</sup> The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>4</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>5</sup>

6. Section 17.4(g) of the Rules requires the ASR number be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. On July 11, 2002, an inspection of Unocal’s antenna structure number 1059096 found no registration number posted. Unocal’s reply to the NOV indicates that no registration number was posted at the antenna structure site, as required.

7. Section 17.23 of the Rules states that unless otherwise specified by the Commission, each new or altered antenna structure to be registered on or after January 1, 1996, must conform to the FAA’s painting and lighting recommendations set forth on the structure’s FAA determination of “no hazard,” as referenced in the following FAA Advisory Circulars: AC 70/7460-1J, Obstruction Marking and Lighting,” effective January 1, 1996, and AC 150/5345-43E, “Specification for Obstruction Lighting Equipment,” dated October 19, 1995. Pursuant to Section 17.23, the specifications, standards, and general requirements stated in the FAA Circulars are mandatory. The ASR for structure number 1059096 indicates the structure was registered after 1996 and specifies lighting specifications in accordance with FAA Circular Number 70/7460-1J, Chapters 4 and 5. Chapter 5 (Red Obstruction Lighting Standards) requires towers exceeding 150 feet (46 meters) above ground level (“AGL”), to have as a top mounted obstruction light, at least one red flashing (L-864) light installed in a manner to ensure an unobstructed view of one or more lights by the pilot. Antenna structure number 1059096 is 205 feet (62.5 meters) AGL. At the time of inspection, the antenna structure did not have at least one top mounted red flashing (L-864) obstruction light installed. The agents observed two single small red lights mounted on top of the structure.

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. §312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...” See *Southern California Broadcasting Co.*, 6 FCC Red 4387 (1991).

<sup>5</sup> Section 312(f)(2) of the Act, 47 U.S.C. §312(f)(2), which also applies to Section 503(b), provides: “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

8. Based on the evidence, we find that Unocal willfully and repeatedly violated Sections 17.4(g) and 17.23 of the Rules by failing to post the ASR number and maintain prescribed lighting.

9. Pursuant to Section 1.80 of the Rules and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*,<sup>6</sup> the base forfeiture amount for failure to comply with prescribed lighting requirements is \$10,000. Section 1.80 of the Rules,<sup>7</sup> does not establish a base forfeiture amount for failure to post the ASR number.<sup>8</sup> The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.<sup>9</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>10</sup> Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$12,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>11</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,<sup>12</sup> Unocal is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for violating Sections 17.4(g) and 17.23 of the Rules.<sup>13</sup>

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,<sup>14</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Unocal SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement

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<sup>6</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> The *Forfeiture Policy Statement* states that "...any omission of a specific rule violation from the...[forfeiture guidelines]...should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the *Act*. *Id.*

<sup>9</sup> *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>11</sup> 47 U.S.C. § 503(b).

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>13</sup> 47 C.F.R. §§ 17.4(g) and 17.23.

<sup>14</sup> 47 C.F.R. § 1.80.

Bureau, Technical and Public Safety Division, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced in the caption.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>15</sup>

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Union Oil of California DBA = Unocal, 260 Caviar St., Kenai, AK 99611.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Windel  
Resident Agent  
Anchorage Resident Agent Office

Enclosure: Attachment A

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<sup>15</sup> See 47 C.F.R. § 1.1914.